SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. —

THE UNITED STATES, PETITIONER

vs.

PROVIDENT TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF GEORGE THEODORE ROBERTS, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 IN THE COURT OF CLAIMS

No. L-53

PROVIDENT TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF George Theodore Roberts, deceased, Plaintiff

v.

UNITED STATES OF AMERICA, DEFENDANT

I. *Petition*

Filed February 25, 1930

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The plaintiff in the above-entitled cause brings this petition and respectfully shows to this honorable court as follows:

1. The decedent, George Theodore Roberts, died on March
2 11, 1921, a resident of Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, leaving a last will and testament naming the Provident Life and Trust Company of Philadelphia as executor. The said last will and testament was duly admitted to probate by the Orphans' Court for the City and County of Philadelphia, in the State of Pennsylvania, on March 16, 1921. Letters testamentary were granted on that day to the Provident Life and Trust Company. Later the said Provident Life and Trust Company was discharged as executor by the said orphans' court and letters of administration de bonis non cum testamento annexo were granted on March 15, 1923, by the said court to the Provident Trust Company of Philadelphia, the plaintiff herein. The said plaintiff is still acting as such administrator and the said letters are in full force and effect at the time of filing this suit. An authenticated copy of the record of the appointment of the plaintiff by the said orphans' court as such administrator is annexed hereto, and marked "Exhibit A."

2. The Provident Life and Trust Company, the then executor of the estate, in conformity with the Revenue Act of 1918, duly filed with the collector of internal revenue at Philadelphia, Pennsylvania, a Federal estate tax return for the said estate disclosing an estate tax liability of $5,353.70. This amount was paid by the plaintiff to the said collector on, to wit, March 11, 1922. Subsequently, the Commissioner imposed an additional estate tax of $20,701.89. This amount, together with interest thereon of $606.88, was paid under protest by the plaintiff herein to the said collector on, to wit, May 17, 1924.

3 3. The plaintiff, in or about the month of August, 1927, filed with the said collector a claim for the refund of $18,404.05, or such greater amount as was legally refundable, a portion of the

estate tax theretofore paid to the collector. The basis of said claim was that there should have been allowed as a deduction from the gross estate the amount of the residue of the estate passing under the will of the decedent to certain charitable corporations and trusts designated therein. The claim was rejected by the Commissioner on, to wit, March 2, 1928, and has never been reopened nor allowed.

4. The plaintiff's testator directed in "Item 8" of the aforesaid will that, upon the decease of his daughter, Elizabeth Wentworth Roberts, without leaving lawful issue her surviving, his entire residuary estate should be distributed, share and share alike, to and among fourteen designated corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or/and to trustees exclusively for such religious, charitable, scientific, literary or educational purposes.

5. The said Elizabeth Wentworth Roberts was born June 10, 1871. On March 11, 1921, the date of the testator's death, she was unmarried, without issue and without possibility of issue. She died on March 12, 1927, unmarried and without issue. Thereupon, the entire residue was payable to the aforesaid corporations and/or trusts designated in the will.

6. These said fourteen bequests amounted in the aggregate to not less than $548,102.66.

7. Section 403 (a) of the Revenue Act of 1918 provides that

> there shall be deducted from the value of the gross estate, in determining the value of the net estate, the amount of all bequests, legacies, devises, or gifts, to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes.

8. The plaintiff avers that the Commissioner should have reduced the gross estate by the amount of $548,102.66, representing the aggregate of the aforesaid bequests; that the taxes paid as aforesaid were not, therefore, due and owing to the United States; and that the said Commissioner should have directed the repayment to the plaintiff from the Treasury of the United States of the amount of the said taxes, with interest.

9. The plaintiff and the testator have always borne true faith and allegiance to the Government of the United States and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

10. The plaintiff has not assigned its claim nor any part thereof but is the sole owner of this claim. The said plaintiff is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets. The plaintiff believes that the facts as stated in this petition are true.

Wherefore, the plaintiff prays this honorable court to enter judgment in the plaintiff's behalf against the United States of America in the amount of $24,939.33, together with interest at six per
5 centum on $3,630.56, a portion thereof, from March 11, 1922, and on $21,308.77, the remainder thereof, from May 17, 1924.

The plaintiff also prays this honorable court to enter judgment in the plaintiff's behalf for the costs and disbursements in this proceeding and for such other and further relief as may be proper.

GEORGE M. MORRIS,
Attorney for Plaintiff.

Of Counsel,
KIXMILLER, BAAR & MORRIS,
815 Fifteenth St. NW., Washington, D.C.

[*Duly sworn to by Howard A. Foster; jurat omitted in printing.*]

6 *Exhibit A to petition*

No. 62974

PHILADELPHIA CITY AND COUNTY, *ss:*

I, William F. Campbell, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania. Do hereby certify and make known that on the 15 day of March, in the year of our Lord one thousand nine hundred and twenty-three letters of administration de bonis non cum testamento annexo on the Estate of George Theodore Roberts deceased were granted unto Provident Trust Co. of Phila. It having first given security well and truly to administer the same. And that no revocation of said letter appears of record in the office of the register of wills for said county.

Given under my hand and seal of office, this 14th day of June 1929

[SEAL] (Signed) JOHN I. KELLY,
Deputy Register.

7 II. *General traverse*

Filed April 5, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

CHARLES B. RUGG,
Assistant Attorney General.

III. *Argument and submission of case*

On January 9, 1933, this case was argued and submitted on merits by Messrs. Allen H. Gardner and George M. Morris, for the plaintiff, and by Mr. Fred K. Dyar, for the defendant.